

Michigan Poverty Law Program's Comments on HB 4520 (bed bug treatment and its costs)

HB 4520 would allow tenants to be made totally liable for the costs of treating and controlling bed bug infestations, without any evidence that a tenant caused the infestation. This change would be a **radical departure from longstanding Michigan residential landlord-tenant law and public policy** that makes landlords primarily responsible for maintaining rental premises and keeping them fit for the use intended. Nothing has changed to merit a different result than this committee's rejection of HB 4520 last year.

If enacted, HB 4520 would become the **first tenant unfriendly bed bug law in the U.S.** Recent laws in other states heighten landlord responsibility for dealing with bed bugs, including paying for the cost of treating them. (see, e.g., New Hampshire Rev. Stat. §540:13-e, eff. Jan 1. 2014; Maine Rev. Stat. §6021-A, eff. 2009, 2011; see also, www.ncsl.org – “bedbugs”)

This bill also defies established science about bed bug behavior, as discussed below.

HB 4520 gives tenants get no new benefits, but tremendous new burdens

While several provisions in HB 4520 raise concern, its most pernicious is Sec. 1F.(3) (p. 6., line 14). This provision would permit a landlord and tenant to assign in a written agreement the responsibility for “costs associated with an infestation, including, but not limited to, costs of control or treatment.” Almost all residential landlord-tenant leases are take it or leave it “adhesion” contracts written by a landlord and reflecting the parties’ hugely unequal bargaining power (which is only accentuated for low income tenants), making it safe to predict that tenants will almost always be “assigned” responsibility for bed bug control/treatment costs.¹

Not only would the bill permit tenants being made solely and strictly liable for bed bug control/treatment costs, whether or not they in any way caused that infestation, it would deny them a say in the “control protocol” and subject them to eviction for a failure to comply with the protocol. Sec 1E(5)(B)(p. 6 line 1). Tenants would have to pay for, but have no say about bed bug treatment.

As well, “if a tenant or the tenant’s guest causes an infestation”, the tenant would not only have to pay control/treatment costs for her rental unit, but also for “other areas where bed bugs have spread.” (Sec. 1F.(1). Bed bug behavior, as discussed below, makes determining causation extremely difficult. This difficulty strongly favors adhering to the general rule, followed by other states in their bed bug legislation - that landlords are primarily responsible for bed bug treatment and its costs.

The bill also would require tenants, despite a lack of expertise, to inspect a rental unit for bedbugs at move-in, without requiring landlords to do a pre or post-tenancy inspection) Sec 1E(2),(4). If within 2 days of moving in a tenant does not report an infestation, the bill suggests the unit would

¹ Michigan’s Truth in Renting Act recognizes the overreach that adhesion contracts invite and prohibits several types of extremely one-sided residential lease provisions.

be deemed “free from bed bugs”. Declaring a unit bed bug free on that timetable contradicts the known science about bed bugs, see below.

By contrast to a tenant’s liability, a landlord would only be liable for an infestation or its control/treatment in the case of “gross negligence”. Sec. 1F.(2) The regime that Sec 1E and F would establish would not only be unfair and unreasonable, it would lack any sound public policy justification, again, as reflected by existing Michigan law and the recent legislation in other states that much more constructively, realistically, and sensibly addresses bed bug responsibility issues.²

Bed bug science doesn’t support HB 4520, and the bill wouldn’t remedy the bed bug problem

Among the many findings of the “Michigan Manual for the Prevention and Control of Bed Bugs” (the “Manual”)³ is that bed bugs can go for long periods (up to one year under optimal conditions) between blood meals. See, Manual, p. 4. The Manual also makes clear that an infestation in one apartment can spread to adjacent units or throughout a building. Manual, p. 53. The dormancy and mobility of bed bugs makes determining causation or responsibility very elusive, and makes the obligations HB 4520 would impose on tenants unfair and unsound, even more so for tenants in multifamily properties.

Further, this bill would create a financial disincentive to tenants reporting infestation. If a tenant knows she’ll be responsible for the costs of bed bug control/treatment, she’ll be less likely to report an infestation, reducing the likelihood of an infestation being properly addressed. Another likely outcome of the bill’s enactment would be an increase in evictions of tenants, especially low income renters, who couldn’t afford to pay bed bug treatment costs, resulting in more homeless families in Michigan. And, because landlords would be stymied by the uncollectibility of many money judgment defendants, their eviction wouldn’t benefit landlords financially, but only increase their administrative costs.

Bed bugs are a real and significant problem in Michigan residential rental housing, among other locations. Unfortunately, HB 4520 does not offer a sound, fair or effective remedy to this problem, and would put a hugely unfair and disproportionate burden of the problem on tenants.

² The bill would also preempt local ordinances concerning bed bug control/treatment (Sec. 1G.)

³ http://www.michigan.gov/documents/emergingdiseases/Bed_Bug_Manual_v1_full_reduce_326605_7.pdf (Version 1.01 - September 2010) The Michigan Department of Community Health and the broadly representative Michigan Bed Bug Working Group published this highly respected and valuable 118 page resource. As its subtitle accurately states, it provides “[c]omprehensive guidance to identify, treat, manage and prevent bed bugs”.